

**2005 DRAFTING REQUEST****Bill**Received: **03/29/2005**Received By: **mkunkel**Wanted: **As time permits**

Identical to LRB:

For: **Jean Hundertmark (608) 266-3794**

By/Representing:

This file may be shown to any legislator: **NO**Drafter: **mkunkel**May Contact: **Amy Boyer 258-9506**

Addl. Drafters:

Subject: **Fin. Inst. - int. rates/loans**

Extra Copies:

Submit via email: **YES**Requester's email: **Rep.Hundertmark@legis.state.wi.us**

Carbon copy (CC:) to:

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Prepayment penalties for variable rate mortgage loans

---

**Instructions:**

See Attached

---

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/1	mkunkel 03/29/2005	lkunkel 03/30/2005	rschluet 03/30/2005		lnorthro 03/30/2005		
/2	mkunkel 05/10/2005	lkunkel 05/10/2005	chaugen 05/10/2005		lnorthro 05/10/2005	lnorthro 05/10/2005	

FE Sent For:

&lt;END&gt;

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/?							
/1	mkunkel 03/29/2005	lkunkel 03/30/2005	rschluet 03/30/2005	Ch 5-10 pub	lnorthro 03/30/2005		

FE Sent For:

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/?	mkunkel	1/mk 3/29					

FE Sent For:

  
<END>

## PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

1 AN ACT *to renumber* 138.056 (3) (b); *to renumber and amend* 138.056 (3) (a);  
2 *to amend* 138.056 (3) (title) and 138.056 (6) (c); and *to create* 138.056 (3m)  
3 (title) of the statutes; **relating to:** prepayment penalties on variable rate  
4 residential mortgage loans.

---

***Analysis by the Legislative Reference Bureau***

Under current law, a residential mortgage loan (a loan secured by a first lien real estate mortgage on, or an equivalent security interest in, a one- to four-family dwelling used by the borrower as his or her principal residence) made after November 1, 1981, may be prepaid in whole or in part by the borrower at any time, but the lender may impose a prepayment penalty or fee if the prepayment is made within five years of the date of the loan. If permitted, the prepayment penalty or fee may not exceed 60 days' interest at the contract rate on the amount by which the aggregate principal prepayments for a 12-month period exceeds 20 percent of the original amount of the loan.

Also under current law, a variable rate loan is a residential mortgage loan, or a consumer loan secured by an interest in a mobile home, the terms of which permit the interest rate to be increased or decreased, which increases or decreases may correspond to an "approved index." A variable rate loan involving a mobile home transaction or using an approved index may be prepaid in whole or in part at any time without penalty. Other variable rate loans may be prepaid in whole or in part without penalty within 30 days after notice of an increase in the interest rate, and may be prepaid at other times subject to the prepayment penalty described above.

Under this bill, a borrower may be subject to a prepayment penalty or fee on a variable rate loan if prepayment of the loan is made within the first three years of the loan and is not made in connection with the sale of the dwelling or mobile home secured by the loan. If permitted, the prepayment penalty or fee is limited to 3 percent in the first year of the loan, 2 percent in the second year of the loan, or 1 percent in the third year of the loan of the amount by which the prepayment exceeds 80 percent of the principal balance of the loan outstanding immediately prior to prepayment. These variable rate loan prepayment provisions are in lieu of the prepayment provisions for residential mortgage loans that are not variable rate loans.

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

SECTION 1. 138.056 (3) (title) of the statutes is amended to read:

138.056 (3) (title) FEES AND PENALTIES PROHIBITED.

SECTION 2. 138.056 (3) (a) of the statutes, as affected by 2003 Wisconsin Act 257, is renumbered 138.056 (3m) and amended to read:

138.056 (3m) A Notwithstanding s. 138.052 (2) (a), and except as provided in s. 428.207, a variable rate loan involving a mobile home transaction or using an approved index may be prepaid at any time in whole or in part without penalty. Other variable rate loans may be prepaid in whole or part without penalty within 30 days after notice of an increase in the interest rate and, except as provided in s. 428.207, with the prepayment penalty under s. 138.052 (2) (a) 2. and 3. if prepayment is made before or after the 30-day period. This paragraph controls if there is a conflict with s. 138.052 (2) (a), except that the parties may agree that, if a prepayment is made within 3 years of the date of the loan and prepayment is not made in connection with the sale of the dwelling or mobile home securing the loan, the lender shall receive an amount not exceeding 3 percent if the prepayment is made in the first year of the loan, 2 percent if the prepayment is made in the 2nd year of the loan, or 1 percent if the prepayment is made in the 3rd year of the loan, of the

revise to make optimal provisions - explicit

intent preserve lost sentence under current law  
all Friday

Amy Boyer  
258-9506

preserves current law

wants explicit ref. or s.th. sim to

428.207(2)(b) which provides that the bill's approach is optimal

is the problem the K-reg's apply to diff. types of loans

(requester likes substance of K-reg but maybe the don't really apply?)

1 amount by which the prepayment exceeds 80 percent of the principal balance of the  
2 loan outstanding immediately prior to the prepayment. This subsection applies  
3 notwithstanding any refinancing, renewal, extension, or modification of the loan.

4           **SECTION 3.** 138.056 (3) (b) of the statutes is renumbered 138.056 (3).

5           **SECTION 4.** 138.056 (3m) (title) of the statutes is created to read:

6 138.056 **(3m)** (title) PREPAYMENT PENALTIES.

7           **SECTION 5.** 138.056 (6) (c) of the statutes is amended to read:

138.056 (6) (c) The borrower's prepayment rights on receiving notice of a  
change in the interest rate.

10                    **SECTION 6. Initial applicability.**

11 (1) This act first applies to loan agreements entered into, renewed, extended,  
12 or modified on the effective date of this subsection.

13 (END)

MDK NOTES

Current law:

Residential mortgage loan (RML) = a loan secured by a 1<sup>st</sup> lien real estate mortgage on, or an equivalent security interest in, a 1- to 4-family dwelling used by the borrower as his or her principal residence

RML made after Nov. 1, 1981 may be prepaid in whole or part by borrower at any time, BUT lender may impose prepayment penalty or fee IF prepayment made within 5 years of the date of the loan.

Q: this allows for prepayment penalty in the contract, and doesn't allow to impose penalty in spite of what contract says, right?

Prepayment penalty or fee may not exceed 60 days' interest at the contract rate on the amount by which the aggregate principal prepayments for a 12-month period exceeds 20% of the original amount of the loan.

Q: what is the "aggregate principal prepayments"?

Variable rate loan (VRL) = RML (or consumer loan secured by interest in a mobile home) the terms of which permit the interest rate to be increased or decreased, which may correspond to an "approved index".

VRL involving mobile home transaction OR using an approved index may be prepaid in whole or in part at any time without penalty.

Other VRL loans may be prepaid in whole or in part without penalty within 30 days after notice of an increase in the interest rate. If prepaid at any other time, then subject to prepayment penalty described above.

Q: so 5-year restriction applies? no - not applicable

2003 LRB-4495/P1

Borrower may be subject to prepayment penalty on VRL IF:

Prepayment is made within 1<sup>st</sup> 3 years of the loan

Prepayment is not made in connection with sale of the dwelling or mobile home secured by the loan

If permitted, prepayment penalty or fee is limited to 3% in the 1<sup>st</sup> year of the loan, 2% in the 2<sup>nd</sup> year of the loan, and 1% in the 3<sup>rd</sup> year of the loan AND the percentages apply to the amount by which the prepayment exceeds 80% of the principal balance of the loan outstanding immediately prior to prepayment.



So diff rules apply under Bill

① RML

prepayment penalty allowed if prepay within 1st 5 yrs  
(penalty calculated -)

(2) VRL (= a type of PML)

- URL w/ approved index
- URL w/o approved index
  - prepays penalty
  - w/o penalty
  - w/ 30 days notice of rate increase

if prepare any other  
time,  
same penalty as  
above

Bill VRL subj to prepayment  
penalty if prepay w/ 1st 3 yrs of loan  
- penalty calculated -  
depends on year in which  
prepaid

SO: (2) above no longer applies?  
what is relat-slip b/w grill ' & (2)?  
Supernodes

newly 138.052(2)(a) = prepare, parallel for RML  
(541 rule)

except as provided in 428.207 =  
no prepayment for refinancing  
by lender, but servicer may impose penalty



State of Wisconsin  
2005 - 2006 LEGISLATURE

LRB-2581/1

MDK:.....

mk

NOTE

By THURS.  
3/31

2005 BILL

GenCat

- 1 AN ACT ...; relating to: prepayment penalties on variable rate residential  
2 mortgage loans.

*Analysis by the Legislative Reference Bureau*

Under current law, a residential mortgage loan (a loan secured by a first lien real estate mortgage on, or an equivalent security interest in, a one- to four-family dwelling used by the borrower as his or her principal residence) made after November 1, 1981, may be prepaid in whole or in part by the borrower at any time, but the lender may impose a prepayment penalty or fee if the prepayment is made within five years of the date of the loan. The prepayment penalty or fee may not exceed 60 days' interest at the contract rate on the amount by which the aggregate principal prepayments for a 12-month period exceeds 20 percent of the original amount of the loan.

Current law imposes different prepayment penalty requirements on a "variable rate loan" which is a residential mortgage loan, or a consumer loan secured by an interest in a mobile home, the terms of which permit the interest rate to be increased or decreased. Such increases or decreases may correspond to an "approved index." A variable rate loan involving a mobile home transaction or using an approved index may be prepaid in whole or in part at any time without penalty. Other variable rate loans may be prepaid in whole or in part without penalty within 30 days after notice of an increase in the interest rate, and may be prepaid at other times subject to the prepayment penalty described above.

This bill eliminates the prepayment penalty requirements for variable rate loans that are described above and creates new requirements. Under the bill, a

**BILL**

lender may not include a prepayment penalty in a variable rate loan unless the borrower has, in writing, offered the borrower a variable rate loan without a prepayment penalty and the borrower initials the offer to indicate that the borrower has declined the offer. ✓ If the borrower declines the offer, the lender may include a prepayment penalty that applies if prepayment of the loan is made within the first ✓ three years of the loan and is not made in connection with the sale of the dwelling or mobile home secured by the loan. ✓ The bill limits the prepayment penalty or fee to 3 percent in the first year of the loan, 2 percent in the second year of the loan, or 1 percent in the third year of the loan, of the amount by which the prepayment exceeds 80 percent of the principal balance of the loan outstanding immediately prior to prepayment. ✓

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1       **SECTION 1.** 138.056 (3) (title) of the statutes is amended to read:

2       138.056 (3) (title) FEES AND PENALTIES PROHIBITED.

History: 1981 c. 45; 1983 a. 232; 1985 a. 325; 1991 a. 221; 1993 a. 88, 112; 1995 a. 27, 336; 1999 a. 9, 53; 2003 a. 33, 257.

3       **SECTION 2.** 138.056 (3) (a) of the statutes, as affected by 2003 Wisconsin Act  
4       257, is repealed.

5       **SECTION 3.** 138.056 (3) (b) of the statutes is renumbered 138.056 (3).

6       **SECTION 4.** 138.056 (3m) of the statutes is created to read:

7       138.056 (3m) PREPAYMENT PENALTIES. (a) Notwithstanding s. 138.052 (2) (a),  
8       and except as provided in s. 428.207, a lender may not include a prepayment penalty  
9       in a variable rate loan unless the lender offers the borrower a variable rate loan  
10      without a prepayment penalty, the offer is in writing, and the borrower initials the  
11      offer to indicate that the borrower has declined the offer. ✓

12      (b) If a borrower declines an offer required under par. (a), the lender may  
13      include a prepayment penalty that provides that, if a prepayment is made within 3  
14      years of the date of the loan and prepayment is not made in connection with the sale  
15      of the dwelling or mobile home securing the loan, the lender shall receive an amount  
16      not exceeding 3 percent if the prepayment is made in the first year of the loan, 2

**BILL**

1 percent if the prepayment is made in the 2<sup>nd</sup> year of the loan, or 1 percent if the  
2 prepayment is made in the 3<sup>rd</sup> year of the loan, of the amount by which the  
3 prepayment exceeds 80 percent of the principal balance of the loan outstanding  
4 immediately prior to the prepayment.

5 (c) This subsection applies variable rate loans made, refinanced, renewed,  
6 extended, or modified on or after the effective date of this paragraph .... [revisor  
7 inserts date].

8 (END)

d-n

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-2581/1dn

MDK:.....

mk

(date)

Rep. Hundtmark:

This bill is based on 2003 LRB-4495/P1, except that I made changes that are based on s. 428.207 (2) (b), stats. Also, for the sake of clarity, I moved the nonstatutory initial applicability provision of the 2003 bill into a statutory provision (i.e., proposed s. 138.056 (3m) (c)).

If you have any questions or redrafting instructions, please contact me.

Mark D. Kunkel  
Senior Legislative Attorney  
Phone: (608) 266-0131  
E-mail: mark.kunkel@legis.state.wi.us

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-2581/1dn  
MDK:lmk:rs

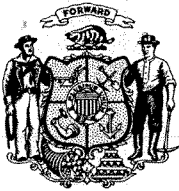
March 30, 2005

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State of Wisconsin  
2005 - 2006 LEGISLATURE

LRB-2581/1

MDK:lmk:rs

↑ keep

O-NOTE

2005 BILL

Today

RM has been run

Refer

- 1 AN ACT *to repeal* 138.056 (3) (a); *to renumber* 138.056 (3) (b); *to amend* 138.056  
2 (3) (title); and *to create* 138.056 (3m) of the statutes; **relating to:** prepayment  
3 penalties on variable rate residential mortgage loans. ✓

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Under current law, a residential mortgage loan (a loan secured by a first lien real estate mortgage on, or an equivalent security interest in, a one- to four-family dwelling used by the borrower as his or her principal residence) made after November 1, 1981, may be prepaid in whole or in part by the borrower at any time, but the lender may impose a prepayment penalty or fee if the prepayment is made within five years of the date of the loan. The prepayment penalty or fee may not exceed 60 days' interest at the contract rate on the amount by which the aggregate principal prepayments for a 12-month period exceeds 20 percent of the original amount of the loan.

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**BILL***lender*

This bill eliminates the prepayment penalty requirements for variable rate loans that are described above and creates new requirements. Under the bill, a lender may not include a prepayment penalty in a variable rate loan unless the ~~borrower~~ has, in writing, offered the borrower a variable rate loan without a prepayment penalty and the borrower initials the offer to indicate that the borrower has declined the offer. If the borrower declines the offer, the lender may include a prepayment penalty that applies if prepayment of the loan is made within the first three years of the loan and is not made in connection with the sale of the dwelling or mobile home secured by the loan. The bill limits the prepayment penalty or fee to 3 percent in the first year of the loan, 2 percent in the second year of the loan, or 1 percent in the third year of the loan, of the amount by which the prepayment exceeds 80 percent of the principal balance of the loan outstanding immediately prior to prepayment.

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**BILL**

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4 prepayment exceeds 80 percent of the principal balance of the loan outstanding  
5 immediately prior to the prepayment.

6 (c) This subsection applies variable rate loans made, refinanced, renewed,  
7 extended, or modified on or after the effective date of this paragraph .... [revisor  
8 inserts date].

9 (END)

(dn)

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-2581/2dn

MDK:.....

1mk

(date)

✓  
Rep. Hundertmark:

This bill is identical to the previous version, except that it corrects an error in the analysis. ✓

Mark D. Kunkel  
Senior Legislative Attorney  
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**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-2581/2dn

MDK:lmk:ch

May 10, 2005

Rep. Hundertmark:

This bill is identical to the previous version, except that it corrects an error in the analysis.

Mark D. Kunkel  
Senior Legislative Attorney  
Phone: (608) 266-0131  
E-mail: [mark.kunkel@legis.state.wi.us](mailto:mark.kunkel@legis.state.wi.us)

**Basford, Sarah**

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**From:** Rostan, Jason  
**Sent:** Tuesday, May 10, 2005 2:30 PM  
**To:** LRB.Legal  
**Subject:** Draft review: LRB 05-2581/2 Topic: Prepayment penalties for variable rate mortgage loans

It has been requested by <Rostan, Jason> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 05-2581/2 Topic: Prepayment penalties for variable rate mortgage loans